

Food and Drug Administration, HHS

§ 108.5

C of part 7 of this chapter specify procedures that may be useful to a recalling firm in determining how to comply with these regulations.

[54 FR 4008, Jan. 27, 1989, as amended at 65 FR 56479, Sept. 19, 2000]

§ 107.280 Records retention.

Each manufacturer of an infant formula shall make and retain such records respecting the distribution of the infant formula through any establishment owned or operated by such manufacturer as may be necessary to effect and monitor recalls of the formula. Such records shall be retained for at least 1 year after the expiration of the shelf life of the infant formula.

[54 FR 4008, Jan. 27, 1989, as amended at 67 FR 9585, Mar. 4, 2002]

PART 108—EMERGENCY PERMIT CONTROL

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AUTHORITY: 21 U.S.C. 342, 344, 371.

SOURCE: 42 FR 14334, Mar. 15, 1977, unless otherwise noted.

Subpart A—General Provisions

§ 108.3 Definitions.

(a) The definitions contained in section 201 of the Federal Food, Drug, and Cosmetic Act are applicable to such terms when used in this part.

(b) *Commissioner* means the Commissioner of Food and Drugs.

(c) *Act* means the Federal Food, Drug, and Cosmetic Act, as amended.

(d) *Permit* means an emergency permit issued by the Commissioner pursuant to section 404 of the act for such temporary period of time as may be necessary to protect the public health.

(e) *Manufacture, processing, or packing of food in any locality* means activities conducted in a single plant or establishment, a series of plants under a single management, or all plants in an industry or region, by a manufacturer, processor, or packer.

§ 108.5 Determination of the need for a permit.

(a) Whenever the Commissioner determines after investigation that a manufacturer, processor, or packer of a food for which a regulation has been promulgated in subpart B of this part does not meet the mandatory conditions and requirements established in such regulation, he shall issue to such manufacturer, processor, or packer an order determining that a permit shall be required before the food may be introduced or delivered for introduction into interstate commerce by that person. The order shall specify the mandatory conditions and requirements with which there is a lack of compliance.

(1) The manufacturer, processor, or packer shall have 3 working days after receipt of such order within which to file objections. Such objections may be filed by telegram, telex, or any other mode of written communication addressed to the Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS-605), 5100 Paint Branch Pkwy., College Park, MD 20740. If such objections are filed, the determination is stayed pending a hearing to be held within 5 working days after the filing of objections on the issues involved unless the Commissioner determines that the objections raise no genuine and substantial issue of fact to justify a hearing.

(2) If the Commissioner finds that there is an imminent hazard to health, the order shall contain this finding and the reasons therefor, and shall state that the determination of the need for

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a permit is effective immediately pending an expedited hearing.

(b) A hearing under this section shall be conducted by the Commissioner or his designee at a location agreed upon by the objector and the Commissioner or, if such agreement cannot be reached, at a location designated by the Commissioner. The manufacturer, processor, or packer shall have the right to cross-examine the Food and Drug Administration's witnesses and to present witnesses on his own behalf.

(c) Within 5 working days after the hearing, and based on the evidence presented at the hearing, the Commissioner shall determine whether a permit is required and shall so inform the manufacturer, processor, or packer in writing, with the reasons for his decision.

(d) The Commissioner's determination of the need for a permit constitutes final agency action from which appeal lies to the courts. The Commissioner will not stay a determination of the need for a permit pending court appeal except in unusual circumstances, but will participate in expediting any such appeal.

[42 FR 14334, Mar. 15, 1977, as amended at 54 FR 24891, June 12, 1989; 61 FR 14479, Apr. 2, 1996; 66 FR 56035, Nov. 6, 2001]

§ 108.6 Revocation of determination of need for permit.

(a) A permit shall be required only during such temporary period as is necessary to protect the public health.

(b) Whenever the Commissioner has reason to believe that a permit holder is in compliance with the mandatory requirements and conditions established in subpart B of this part and is likely to remain in compliance, he shall, on his own initiative or on the application of the permit holder, revoke both the determination of need for a permit and the permit that had been issued. If denied, the applicant shall, upon request, be afforded a hearing conducted in accordance with § 108.5 (b) and (c) as soon as practicable. Such revocation is without prejudice to the initiation of further permit proceedings with respect to the same manufacturer, processor, or packer should later information again show the need for a permit.

§ 108.7 Issuance or denial of permit.

(a) After a determination and notification by the Commissioner in accordance with the provisions of § 108.5 that a manufacturer, processor, or packer requires a permit, such manufacturer, processor, or packer may not thereafter introduce or deliver for introduction into interstate commerce any such food manufactured, processed, or packed by him unless he holds a permit issued by the Commissioner or obtains advance written approval of the Food and Drug Administration pursuant to § 108.12(a).

(b) Any manufacturer, processor, or packer for whom the Commissioner has made a determination that a permit is necessary may apply to the Commissioner for the issuance of such a permit. The application shall contain such data and information as is necessary to show that all mandatory requirements and conditions for the manufacturer, processing or packing of a food for which regulations are established in subpart B of this part are met and, in particular, shall show that the deviations specified in the Commissioner's determination of the need for a permit have been corrected or suitable interim measures established. Within 10 working days after receipt of such application, (except that the Commissioner may extend such time an additional 10 working days where necessary), the Commissioner shall issue a permit, deny the permit, or offer the applicant a hearing conducted in accordance with § 108.5 (b) and (c) as to whether the permit should be issued. The Commissioner shall issue such a permit to which shall be attached, in addition to the mandatory requirements and conditions of subpart B of this part, any additional requirements or conditions which may be necessary to protect the public health if he finds that all mandatory requirements and conditions of subpart B of this part are met or suitable interim measures are established.

(c) Denial of a permit constitutes final agency action from which appeal lies to the courts. The Commissioner will not stay such denial pending court appeal except in unusual circumstances, but will participate in expediting any such appeal.